IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

RSA.No. 143 of 2007()

AS.81/1997 of SUB COURT, PAYYANNUR
OS.284/1988 of MUNSIFF COURT, THALIPARAMBA
.....

APPELLANT/APPELLANT/DEFENDANT

NALOOR KELAPPAN NAMBIAR,
S/O. RAMAN NAIR, AGRICULTURIST,
RESIDING AT THADIKKADAVU AMSOM,
THIMIRI DESOM, TALIPARAMBA TALUK,
KANNUR DISTRICT.

BY ADV. SMT.S.K.DEVI
SRI.K.P.PRADEEP (PAYYANNUR)

RESPONDENT/RESPONDENT/PLAINTIFF

ARAKKAL SANKARAN ASARI,
S/O. NARAYANAN, AGRICULTURIST,
RESIDING AT THADIKKADAVU AMSOM
THIMIRI DESOM, TALIPARAMBA TALUK,
KANNUR DISTRICT.

BY //

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 12/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.274/07 IN RSA 143/07

DISMISSED

12/3/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

M.SASIDHARAN NAMBIAR,J.

R.S.A .NO. 143 OF 2007

Dated 12th March 2007

J U D G M E N T

Defendant in O.S.284/1988 on the file of Munsiff court, Taliparamba is appellant. Plaintiff therein is the respondent. Suit was originally filed for permanent prohibitory injunction. The suit was decreed. Appellant challenged the decree and judgment before Sub court,Payyannaur in A.S.81/1997. Learned Sub Judge on re-appreciation of evidence set aside the decree after allowing amendment converting the suit for recovery of possession on the strength of title and directing trial court to appoint fresh commission. Learned Munsiff subsequent to remand appointed another commission who submitted Exts.C2 report and C1 plan. Case of appellant was that property originally belonged to Ramachandran Nambiar and others who under Ext.A2 jenmom assignment deed dated 5/2/1977 assigned it in favour of M.T.V.Balakrishnan Nambiar and under Ext.A1 sale deed dated 11/3/1977 he assigned the property in favour of respondent and therefore he has

right, title and possession to the property. It was contended that appellant has no manner of right or possession to the property and therefore appellant is entitled to the decree sought for. Appellant in the written statement contended that Ramachandran and others had no right over 4 acres and 40 cents described in plaint A schedule property and appellant is in possession of property lying on west of road including plaint B schedule property and it was obtained on oral lease from Thimiri Devaswom 30 years ago and he effected the improvements and respondent is not entitled to the decree sought for. In the additional written statement after amendment of the plaint it was contended that respondent has no manner of right or title to plaint B schedule property and respondent has not been in possession of the property more than 12 years and his right if any was adverse possession and barred by limitation and suit is to be dismissed.

2. On the evidence PWs.1 and 2 and Exts.A1 to A4, CW1, Exts.C1 and C2 and evidence of Dws.1 to 5 and Exts.B1 to B3 learned Munsiff found that plaint schedule property has been correctly demarcated in Ext.C2 report and C1 plan and respondent has title

and possession over plaint schedule property and respondent is entitled to the decree sought for. Learned Munsiff granted a decree restraining appellant from trespassing into plaint B schedule property. Appellant challenged the decree and judgment before Sub court, Payyannur in A.S.81/1997. Learned Sub Judge on re-appreciation of evidence confirmed the findings of the learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for appellant was heard.

4. Arguments of learned counsel appearing for appellant is that courts below did not comply with the directions of Appellate court while remanding the suit and the trial court and Appellate court are not entitled to go behind the order of remand and therefore decree and judgment are to be set aside. It was argued that first Appellate court in the earlier appeal directed that properties are to be identified with reference of title deeds and also with reference to improvements and as it was not done courts below should not have granted the decree based on Exts.C1 and C2. It was also argued that when Exts.A1 and A2 covers only 3.20 acres and plaint schedule property is having

an extent of 4.31 acres courts below should not have granted the decree.

5. On hearing learned counsel appearing for appellant and on going through the judgments of courts below, I do not find any substantial questions of law involved in the appeal. Though it was argued that learned Munsiff has gone behind the directions of appellate court while remanding the suit originally, the submission that the directions in the order of remand were not complied with it not correct what was directed by first Appellate court while remanding the suit was to appoint a fresh commission to identify the properties with reference to the title deeds. After remand learned Munsiff appointed a commission. Commissioner identified the properties with reference to the title deeds and submitted Exts.C2 report and C1 plan. Though extent of property shown in the title deed of respondent is only 3.20 acres, courts below on the evidence found that actual extent within the boundaries is 4.31 acres as shown in the plaint. It is on that basis courts below granted decree.

6. The trial court and first Appellate court considered the evidence in detail. On the evidence it was found that respondent has title and possession to

the plaint B schedule property. It is a factual finding. It cannot be interfered in exercise of the powers of this court under Section 100 of Code of Civil Procedure. As no substantial question of law is involved, the second appeal is not maintainable.

Appeal is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.